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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 43318 & 43319
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NOS. CR 2014-4117
v.)	& CR 2015-0393
)	
TRACY GRIFFIN-MURRIETA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal for two cases, forty-eight-year old Tracy Griffin-Murrieta appeals from the district court's order denying her Idaho Criminal Rule 35 motion for a reduction of sentence in the first case, as well as from the judgment of conviction in the second case. In the first case, Ms. Griffin-Murrieta asserts the district court abused its discretion when it denied her Rule 35 motion. In the second case, she asserts the district court abused its discretion when it imposed a concurrent unified sentence of seven years, with four years fixed, following her plea of guilty to possession of a controlled substance-methamphetamine.

Statement of the Facts & Course of Proceedings

Idaho Falls Police Department officers went to a house to arrest Ms. Griffin-Murrieta and another person on outstanding warrants. (Presentence Report (*hereinafter*, PSI), pp.4, 30.) When an officer told Ms. Griffin-Murrieta she was under arrest, she reportedly tried to reach into a brown purse next to her. (PSI, p.4.) The officer handcuffed Ms. Griffin-Murrieta and searched the purse. (PSI, p.4.) Inside the purse, the officer found drug paraphernalia, four hydrocodone pills, and 1.26 grams of suspected methamphetamine. (PSI, p.4.)

In Bonneville County No. CR 2014-4117 (*hereinafter*, the 2014 case), the State filed a Criminal Complaint alleging Ms. Griffin-Murrieta had committed the offense of possession of a controlled substance-methamphetamine, felony, in violation of Idaho Code § 37-2732(c)(1). (R., pp.7-8.) After Ms. Griffin-Murrieta waived a preliminary hearing, the magistrate bound her over to the district court. (R., pp.17-18.) The State then filed a Prosecuting Attorney's Information charging her with the above offense. (R., pp.19-20.)

Pursuant to a plea agreement, Ms. Griffin-Murrieta agreed to plead guilty to possession of a controlled substance. (R., pp.25-28.) The district court accepted the guilty plea. (R., pp.30-31.) The district court then imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.43-45.)

Ms. Griffin-Murrieta filed a Motion to Reduce Sentence pursuant to Idaho Criminal Rule 35. (R., pp.50-51.) She later withdrew the motion. (R., pp.57-59.)

After Ms. Griffin-Murrieta participated in a "rider" (see R., pp.61-62), the district court placed her on probation for a period of four years. (R., pp.67-70.)

About six months later, an Idaho Falls Police Department officer conducted a traffic stop on Ms. Griffin-Murrieta and found 0.6 grams of methamphetamine in her vehicle. (Bonneville County Pre-Sentence Report: Update to Bonneville County Presentence Report CR 14-4117, Apr. 20, 2015 (*hereinafter*, PSI Update), p.1.) A few days after, the State filed a Report of Probation Violation in the 2014 case. (R., pp.73-75.) The State also filed, in Bonneville County No. CR 2015-393 (*hereinafter*, the 2015 case), a Criminal Complaint alleging Ms. Griffin-Murrieta had committed the offense of felony possession of a controlled substance. (R., pp.117-18.) The State later amended the alleged offense in the 2015 case to felony possession of a controlled substance-methamphetamine. (R., pp.134-36.)

In the 2015 case, Ms. Griffin-Murrieta waived a preliminary hearing, and the magistrate bound her over to the district court. (R., pp.137-38.) The State then filed a Prosecuting Attorney's Information in the 2015 case charging her with felony possession of a controlled substance-methamphetamine. (R., pp.141-42.)

In the 2014 case, Ms. Griffin-Murrieta admitted to violating her probation by not attending orientation as directed, and the State withdrew the remaining allegations. (R., pp.78-79; see R., pp.73-74; Tr., p.16, Ls.15-16, p.31, L.20 – p.32, L.9, p.33, Ls.10-17.)

Under a global plea agreement, Ms. Griffin-Murrieta agreed to admit to violating her probation in the 2014 case and to plead guilty to possession of a controlled substance-methamphetamine in the 2015 case. (R., pp.81-84, 149-52.) If she were accepted into a problem solving court, the State would recommend probation with the special condition of successful completion of a problem solving court, while being free to

argue the terms of the underlying sentence. (R., pp.81, 149.) Otherwise, the State would be free to argue the terms of the underlying sentence, but would recommend the sentences run concurrently. (R., pp.81-82, 149-50.) The district court accepted Ms. Griffin-Murrieta's guilty plea in the 2015 case. (R., pp.85-86, 154-55.)

At the probation violation disposition/sentencing hearing for both cases, the district court noted Ms. Griffin-Murrieta had been denied admission to all problem solving courts. (Tr., p.20, Ls.3-13.) Ms. Griffin-Murrieta recommended the district court consider placing her on a Therapeutic Community "rider." (R., p.87; Tr., p.22, Ls.13-20, p.23, Ls.20-22.) However, when asked by the district court, Ms. Griffin-Murrieta acknowledged she had already participated in a Therapeutic Community rider. (Tr., p.22, L.21 – p.23, L.3.) The State recommended, in the 2015 case, that the district court impose a unified sentence of seven years, with four years fixed, to run concurrently with the sentence in the 2014 case. (R., pp.87-88; Tr., p.24, L.24 – p.25, L.16.) The State also recommended the district court retain jurisdiction to place Ms. Griffin-Murrieta on a Therapeutic Community rider. (R., p.88; Tr., p.25, Ls.9-11.)

However, the district court went beyond the parties' recommendations. In the 2014 case, the district court revoked Ms. Griffin-Murrieta's probation and executed the original sentence. (R., pp.90-92.) In the 2015 case, the district court imposed a unified sentence of seven years, with two years fixed, to run concurrently with the sentence in the 2014 case. (R., pp.163-65.)

Ms. Griffin-Murrieta filed a Motion to Reduce Sentence pursuant to Idaho Criminal Rule 35 in both cases. (R., pp.93-94, 168-69.) Following a hearing, the district court denied the Rule 35 motions. (R., pp.97-99, 172-74.)

Ms. Griffin-Murrieta filed a Notice of Appeal timely from the district court's orders denying the Rule 35 motions in both cases, and from the judgment of conviction in the 2015 case.¹ (R., pp.100-03, 178-81.) The Idaho Supreme Court entered an order to consolidate the appeals. (Order Consolidating Cases, Aug. 12, 2015.)

ISSUES

1. Did the district court abuse its discretion in the 2014 case when it denied Ms. Griffin-Murrieta's Idaho Criminal Rule 35 motion for a reduction of sentence?
2. Did the district court abuse its discretion in the 2015 case when it imposed a concurrent unified sentence of seven years, with two years fixed, upon Ms. Griffin-Murrieta following her plea of guilty to possession of a controlled substance-methamphetamine?

ARGUMENT

I.

The District Court Abused Its Discretion In The 2014 Case When It Denied Ms. Griffin-Murrieta's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Ms. Griffin-Murrieta asserts that the district court abused its discretion in the 2014 case when it denied her Idaho Criminal Rule 35 motion for a reduction of sentence. "A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe." *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). "The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion." *Id.* "The criteria for examining rulings denying the requested leniency

¹ On appeal, Ms. Griffin-Murrieta does not challenge the district court's decision to deny her Rule 35 motion in the 2015 case.

are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

The Idaho Supreme Court has held that “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.*

Mindful of *Huffman*, Ms. Griffin-Murrieta asserts that her sentence in the 2014 case is excessive.² As Ms. Griffin-Murrieta asserted before the district court, she has a unified sentence of seven years, with three fixed, in the 2014 case, but she has a unified sentence of seven years, with two fixed, in the 2015 case. (See Tr., p.37, Ls.19-21.) Ms. Griffin-Murrieta’s sentence in the 2014 case should be reduced to a unified sentence of six years, with two fixed, “so she’s serving two fixed on both [cases] instead of two on one and three on the other; so she would be eligible for parole in two years instead of three.” (See Tr., p.37, Ls.21-25.) Thus, the district court abused its discretion in the 2014 case when it denied Ms. Griffin-Murrieta’s Rule 35 motion for a reduction of sentence.

² At the Rule 35 motion hearing, the State argued, “[s]o at this point, I don’t think any new information has been presented to this Court. This is strictly a request for leniency.” (Tr., p.39, Ls.16-18.)

II.

The District Court Abused Its Discretion In the 2015 Case When It Imposed A Concurrent Unified Sentence Of Seven Years, With Two Years Fixed, Upon Ms. Griffin-Murrieta Following Her Plea Of Guilty To Possession Of A Controlled Substance-Methamphetamine

Ms. Griffin-Murrieta asserts the district court abused its discretion in the 2015 case when it imposed her concurrent unified sentence of seven years, with two years fixed, because her sentence is excessive considering any view of the facts.

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Ms. Griffin-Murrieta does not assert that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Griffin-Murrieta must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Ms. Griffin-Murrieta submits that, because the district court did not give adequate consideration to mitigating factors, the sentence imposed by the district court is excessive considering any view of the facts. Specifically, the district court did not adequately consider Ms. Griffin-Murrieta's remorse and acceptance of responsibility. The update to the presentence report stated that Ms. Griffin-Murrieta "admitted to the instant offense and expressed some remorse for her actions." (PSI Update, p.5.) At the sentencing hearing, Ms. Griffin-Murrieta told the district court, "I don't want to make excuses. I made the wrong choice." (Tr., p.26, Ls.19-20.)

The district court also did not give adequate consideration to Ms. Griffin-Murrieta's family support. During the most recent presentence investigation, Ms. Griffin-Murrieta "reported that she maintains good relationship[s] with her mother and siblings" and "indicated that her children are supportive of her and that neither of them is currently involved in criminal activity." (PSI Update, p.2.) At the sentencing hearing, she stated, "[a]ctually, I'm lucky my family is still here for me." (Tr., p.26, Ls.2-3.) Ms. Griffin-Murrieta also related, "[m]y daughter told me she believes in me still and not to give up." (Tr., p.26, Ls.10-11.) She further informed the district court she did not abscond because "I was not going to leave my family." (Tr., p.26, Ls.22-23.)

Additionally, the district court did not adequately consider Ms. Griffin-Murrieta's problems with substance abuse. The Idaho Supreme Court has recognized substance abuse as a mitigating factor in cases where it found a sentence to be excessive. See, e.g., *State v. Nice*, 103 Idaho 89, 91 (1982). During the presentence investigation for the 2014 case, Ms. Griffin-Murrieta reported daily consumption of alcohol and regular use of methamphetamine and hydrocodone in the past year. (PSI, p.15.) While

previously she had not completed drug court or attended aftercare following her completion of a Therapeutic Community program in prison, Ms. Griffin-Murrieta expressed at the time of the 2014 presentence investigation “that she has a problem with her drug use and would like to participate in intense treatment.” (PSI, p.15.) In her GAIN-I evaluation, she was diagnosed with amphetamine and alcohol dependence. (PSI, p.15.)

Unfortunately, Ms. Griffin-Murrieta’s problems with substance abuse contributed to the instant offense in the 2015 case. After Ms. Griffin-Murrieta was placed on probation in the 2014 case, she began associating with a former boyfriend and relapsed. (PSI Update, pp.1-2.) She admitted to consuming alcohol while on probation, and reported daily use of marijuana and methamphetamine before her arrest in the 2015 case. (PSI, Update, p.4.)

Because the district court did not give adequate consideration to the above mitigating factors, the sentence imposed by the district court is excessive considering any view of the facts. Thus, district court abused its discretion in the 2015 case when it imposed Ms. Griffin-Murrieta’s concurrent unified sentence of seven years, with two years fixed.

CONCLUSION

For the above reasons, Ms. Griffin-Murrieta respectfully requests that this Court reduce her sentences as it deems appropriate. Alternatively, she requests that the 2014 case be remanded to the district court for a new Rule 35 motion hearing, and that the 2015 case be remanded to the district court for a new sentencing hearing.

DATED this 15th day of December, 2015.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of December, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TRACY GRIFFIN-MURRIETA
BONNEVILLE COUNTY JAIL
605 N CAPITAL
IDAHO FALLS ID 83402

DARREN B SIMPSON
DISTRICT COURT JUDGE
E-MAILED BRIEF

JAMES H BARRETT JR
BONNEVILLE COUNTY PUBLIC DEFENDERS
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas